



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: DEC 17 2001

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of [REDACTED] on [REDACTED]. You were formed by a coalition of U.S. industry, academic and research institutions, and community-based economic development organizations to provide high speed communications links such as interactive teleconferencing that will allow people to work together via computers. Your computer network will allow citizens of one country, without leaving their homeland, to work for companies in another, and will facilitate joint learning activities whereby experts of one country can teach students anywhere else in the world.

One of your primary activities will be to provide employment opportunities for unemployed or under-employed scientists in [REDACTED]. Severe cutbacks in scientific research programs in [REDACTED] have left many former defense scientists and engineers under employed or without employment. Computers, software, and interactive videoconferencing capabilities supplied by your "industrial partners" are being placed in the [REDACTED]. This technology will allow unemployed or underemployed engineers and scientists in [REDACTED] to work for eastern companies, thereby enabling them to support themselves and their families, and to provide taxable income for their governments. Major corporations and universities have indicated their intent to become your customers after the employment project is implemented.

You anticipate charging a fee to corporate customers for the following services:

- Hardware, software, and communication capability;
- A mechanism, such as a website, where potential employers and employees can identify each other and begin a relationship;

- Assistance to employers and employees in overcoming cultural language and logistical obstacles.

The goal is to encourage talented technical and scientific individuals to perform peaceful and legitimate work and discourage them from working with terrorist organizations or rogue nations. You have enclosed a letter from Senator [REDACTED] and a similar letter from Congressman [REDACTED] supportive of these goals. Initially, you anticipate approximately 40% of your activities will be to provide services to these scientists and engineers, and their prospective employers.

You also plan to provide opportunities for [REDACTED] to participate internationally in research and educational interchanges. Corporations have provided, or will provide, the hardware and software to the [REDACTED]'s to allow them to participate in these interchanges. The equipment will be targeted toward training students to participate in manufacturing engineering (design) projects and to provide long distance learning programs where the instructors are faculty of [REDACTED] or foreign institutions. Initially, you anticipate approximately 40% of your activities will be working with [REDACTED]

Your other goals include the following:

- To provide opportunities for at-risk youth to participate in international training "interchanges;"
- To assist in cooperation between the United States and [REDACTED] to improve the quality of medical care in [REDACTED];
- To provide joint programs between regional cultural institutions in the United States and the [REDACTED];
- To provide joint programs involving schools in the United States and [REDACTED] to lead to a better understanding and expanded horizons for young people.

APPLICABLE LAW:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order for an organization to be exempt as an organization described in section 501(c)(3), it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in

section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. It includes relief of the poor and distressed or of the underprivileged, and lessening the burdens of government.

Section 1.501(c)-1(d)(3) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 72-369, 1972-2 C.B. 245, provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. In this case the organization was formed to provide managerial and consulting services for nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The services consist of writing job descriptions and training manuals, recruiting personnel, constructing organizational charts, and advising organizations on specific methods of operation. These activities are designed for the individual needs of each client organization. Rev. Rul. 72-369 concludes that the fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Rev. Rul. 80-287, 1980-2 C.B. 185, holds that a nonprofit corporation created by several bar associations in a metropolitan area to provide a lawyer referral service does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. The program is open to all members of the community and, thus, is not operated exclusively for the relief of the poor, distressed, or underprivileged.

Rev. Rul. 85-2, 1985-1 C.B. 178, holds that an organization providing legal assistance to guardians ad litem who represent abused and neglected children before a juvenile court that requires their appointment lessens the burdens of government. The Rev. Rul. provides that in determining whether an activity is a burden of government, the questions to be answered are whether there is an objective manifestation by the government that it considers such activity to be part of its burden and whether the organization is actually lessening the burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is

insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. A favorable working relationship between the government and the organization is strong evidence that the organization is actually 'lessening' the burdens of the government.

In Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) the U.S. Supreme Court stated in a case involving a claim for exemption on exclusively educational grounds:

In order to fall within the claimed exemption an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy an organization's exemption regardless of the number or importance of truly educational purposes.

In B.S.W. Group, Incorporated, 70 TC No. 31, the Tax Court held that an organization offering consulting and research services for a fee to various nonprofit organizations did not qualify for exemption under section 501(c)(3) of the Code. The fees charged were set at or close to cost, but in no event would they be less than the amount needed to cover the cost of providing services. Several factors were listed by the court as militating against exemption. The organization's financing did not resemble that of the typical 501(c)(3) organization in that it did not solicit or receive voluntary contributions from the public. Its only source of income was fees for services. Other negative factors were the manner in which the organization's activities were conducted, the commercial hue of those activities, competition with commercial firms providing similar services and the existence and amount of annual or accumulated profits.

In At Cost Services, Inc. v. Commissioner, T.C. Memorandum 2000-39, (October 25, 2000), the Tax Court held that an organization providing temporary employment services by matching unemployed or underemployed members of a minority group with prospective employers does not qualify for exemption under section 501(c)(3) of the Code. The Court concluded that the organization's employment services constitute the conduct of a temporary service agency, which is essentially a commercial venture.

ANALYSIS

Although providing employment opportunities for unemployed or underemployed scientists and engineers in [REDACTED] may provide some public benefit, this activity is not charitable within the meaning of section 501(c)(3) of the Code. The program is open to all such individuals regardless of economic status. Thus, it is not operated exclusively for the relief of the poor, distressed, or underprivileged within the meaning of section 1.501(c)(3) -1(d)(2) of the regulations. See Rev. Rul. 80-287, supra.

Moreover, there is no indication in your application that the federal government supports your activities or considers your activities to be its burden, nor is there any evidence that you have any relationship at all with the federal government. As indicated in Rev. Rul. 85-2, supra, the fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not

[REDACTED]

sufficient to establish that the organization is lessening the burdens of government. Therefore, this activity does not lessen the burdens of government within the meaning of section 1.501(c)(3) - 1(d)(2) of the regulations.

In addition, by providing a service to link unemployed and underemployed scientists and other professionals with prospective employers, you are engaged in a substantial nonexempt activity. The provision of employment services for a fee constitutes the conduct of a regular commercial venture for profit. At Cost Services, Inc. v. Commissioner, supra; Better Business Bureau v. United States, supra.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(sigh

[REDACTED]
Manager, Exempt Organizations
Technical Group [REDACTED]

Cc:

[REDACTED]